

Kathleen Sullivan (SBN 242261)
kathleensullivan@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Sean S. Pak (SBN 219032)
seanpak@quinnemanuel.com
John M. Neukom (SBN 275887)
johnneukom@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

Mark Tung (SBN 245782)
marktung@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Attorneys for Plaintiff Cisco Systems, Inc.

Steven Cherny (*admitted pro hac vice*)
steven.cherny@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Adam R. Alper (SBN 196834)
adam.alper@kirkland.com
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Michael W. De Vries (SBN 211001)
michael.devries@kirkland.com
KIRKLAND & ELLIS LLP
333 South Hope Street
Los Angeles, California 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MATTHEW D.
CANNON IN SUPPORT OF ARISTA'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

DEMAND FOR JURY TRIAL

papers. For example, Arista's Brief does not include citations for any of the passages that Arista proposes sealing. Nevertheless, Cisco has endeavored to identify the information Arista cited and respond accordingly, but has been unable to ascertain the source of some of that information. Cisco reserves the right to revisit its analysis in the event that Arista clarifies the citations in its Brief.

5. Many passages in its Brief and Exhibit 1 that Arista proposes for sealing should not be sealed. Cisco is not asking the Court to seal passages of Arista's Brief or Exhibit 1 that reflect Arista's attorney argument, rather than statements or information that are actually contained in Cisco's documents. Additionally, some passages that need not be sealed include citations to exhibits that Cisco has de-designated under the protective order. And one passage even appears to cite Arista information.

6. But while Arista's Motion to Seal is over-inclusive, some narrowly-tailored redactions to Arista's Brief, Exhibit 1 thereto, and certain of the Exhibits to Arista's proposed counterclaims are appropriate. Some of the documents that Arista discusses in and attaches to its Brief and Exhibit 1 contain confidential information regarding Cisco's operations to which Cisco's competitors are not entitled unfettered access.

7. Pursuant to Civil Local Rule 79-5(e), Cisco identifies those portions of Arista's filings that it believes should and should not be sealed in the table below:

Document	Portion(s)	Seal?	Justification
Arista's Brief	p. 1 ln. 10-11	Seal	Apparently quotes CSI-CLI-01335895. See paragraph 8 below.
	p. 1 ln. 12-14	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 2 ln. 11-12	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 2 ln. 13-14	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 2 ln. 19-20 ("internally, Cisco ... relevant market")	Do not seal	Arista attorney argument.
Exhibit 1 (Arista's Response to Cisco's Second Amended Complaint; Arista's	p. 13 ln. 12 ("Cisco knows what is at stake.")	Do not seal	Arista attorney argument.
	p. 13 ln. 12-14	Seal	Apparently quotes CSI-CLI-01335895. See paragraph 8 below.
	p. 13 ln. 15-16	Seal	Quotes Exhibit A. See paragraph 11 below.

Document	Portion(s)	Seal?	Justification
Counterclaims for Antitrust and Unfair Competition)	p. 16 ln. 18 (“Cisco’s own . . . to Cisco.”)	Do not seal	Arista attorney argument.
	p. 16 ln. 18-21	Seal	Apparently quotes Exhibit C. See paragraph 13 below.
	p. 16 ln. 21-23 (“As one . . . treads nearby.”)	Do not seal	Quotes Exhibit B. See paragraph 12 below.
	p. 17 at ln. 9-11	Seal	Quotes Exhibit C. See paragraph 13 below.
	p. 17 ln. 11-12 (“That strategy . . . in 2014.”)	Do not seal	Arista attorney argument.
	p. 18 ln. 9-10	Seal	Cites unidentified Cisco documents. See paragraph 10 below.
	p. 18 ln. 15-17 (“As Cisco’s . . . into scripts.”)	Do not seal	Quotes Exhibit D. See paragraph 14 below.
	p. 18 ln. 18 (“This was no accident.”)	Do not seal	Arista attorney argument.
	p. 19 ln. 10 (“Cisco knew that its”)	Do not seal	Arista attorney argument.
	p. 19 ln. 12-14	Seal	Apparently quotes Exhibit F. See paragraph 16 below.
	p. 19 ln. 14-17 (“And Cisco . . . Cisco environments.”)	Do not seal	Quotes Exhibit E. See paragraph 15 below.
	p. 19 ln. 17-18	Seal	Quotes Exhibit F. See paragraph 16 below.
	p. 19 ln. 19 (“those”)	Do not seal	Arista attorney argument.
	p. 21 ln. 4 (“barrier to entry”)	Do not seal	Arista attorney argument.
	p. 21 ln. 23-24	Seal	Apparently quotes Exhibit F. See paragraph 16 below.
	p. 22 ln. 3-5	Seal	Apparently quotes Exhibit A. See paragraph 11 below.
	p. 22 ln. 5 (“Below is . . . is aware.”)	Do not seal	Arista attorney argument.
	p. 29 ln. 18-23	Do not seal	Arista attorney argument and quotations from Exhibit D. See paragraph 14 below.
	p. 30 ln. 2	Seal	Apparently quotes Exhibit A. See paragraph 11 below.
	p. 31 ln. 19-20	Seal	Cites unidentified Cisco documents. See paragraph 10 below.
	p. 32 ln. 3-5	Seal	Quotes Exhibit G. See paragraph 17 below.
	p. 34 ln. 11 (“Cisco was . . . rival firms.”)	Do not seal	Arista attorney argument.
	p. 34 ln. 11-13	Seal	Apparently quotes CSI-CLI-01133437. See paragraph 9 below.
	p. 34 ln. 13-14 (“Arista was also knew”)	Do not seal	Arista attorney argument.

Document	Portion(s)	Seal?	Justification
	p. 34 ln. 14-15	Seal	Quotes Exhibit H. See paragraph 18 below.
	p. 34 ln. 16-18 ("Cisco also . . . engineering awareness.")	Do not seal	Apparently quotes Arista public documents.
	p. 34 ln. 19-20 ("Not only . . . industry-standard CLI.")	Do not seal	Arista attorney argument.
	p. 35 ln. 7 ("as Cisco knew")	Do not seal	Arista attorney argument.
	p. 35 ln. 23 ("Not only . . . show that")	Do not seal	Arista attorney argument.
	p. 38 ln. 2-3 ("Cisco's internal . . . its conduct")	Do not seal	Arista attorney argument.
	p. 39 ln. 28 to p. 40 ln. 1 ("It explicitly . . . company documents.")	Do not seal	Arista attorney argument.
	p. 43 ln. 16-17	Seal	Apparently quotes CSI-CLI-01335895. See paragraph 8 below.
	p. 43 ln. 24 ("as Cisco . . . its documents")	Do not seal	Arista attorney argument.
	p. 44 ln. 18 ("huge investment . . . described it")	Do not seal	Apparently quotes Exhibit D. See paragraph 14 below.
	p. 46 ln. 9-11	Seal	Quotes Exhibit F. See paragraph 16 below.
	p. 46 ln. 13 ("those barriers to entry")	Do not seal	Arista attorney argument.
	p. 47 ln. 3-5	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 48 ln. 3-4 ("As one . . . treads nearby.")	Do not seal	Quotes Exhibit B. See paragraph 12 below.
	p. 48 ln. 27-28	Seal	Apparently quotes Exhibit A. See paragraph 11 below.
	p. 49 ln. 22 ("As Cisco knew")	Do not seal	Arista attorney argument.
Exhibit A to Arista's Counterclaims ("Exhibit A")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 11 below.
Exhibit B to Arista's Counterclaims ("Exhibit B")	Personal e-mail addresses	Seal	Personal privacy.
	All other content	Do not seal	Non-confidential personal communication. See paragraph 12 below.
Exhibit C to Arista's Counterclaims ("Exhibit C")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 13 below.
Exhibit D to Arista's Counterclaims ("Exhibit D")	Entire	Do not seal	Public document. See paragraph 14 below.

Document	Portion(s)	Seal?	Justification
Exhibit E to Arista's Counterclaims ("Exhibit E")	Entire	Do not seal	Public document. See paragraph 15 below.
Exhibit F to Arista's Counterclaims ("Exhibit F")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 16 below.
Exhibit G to Arista's Counterclaims ("Exhibit G")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 17 below.
Exhibit H to Arista's Counterclaims ("Exhibit H")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 18 below.

8. Several of Arista's proposed redactions appear to be based on quotations from a document produced by Cisco in this case beginning with Bates number CSI-CLI-01335895. This document describes Cisco's assessment of the marketplace, its product development and marketing plans, and its predictions for how the marketplace will evolve—all of which is confidential information that Cisco's competitors could use in attempts to damage Cisco's ability to compete in the marketplace. The passages quoting from this document should therefore be sealed.

9. One of Arista's proposed redactions appears to be based on quotations produced by Cisco in this case beginning with Bates number CSI-CLI-01133437. This document, including the passages quoted in Exhibit 1, contains a discussion among Cisco engineers regarding the merits of Cisco's products. Disclosure of this information would "harm [Cisco's] competitive standing," because competitors could exploit such information in their own product development and/or marketing plans. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

10. Some of Arista's proposed redactions refer to documents that Cisco has designated as confidential under the Protective Order, but which Arista does not quote or specifically identify, and which documents Cisco has not been able to identify. See Exhibit 1 at p. 18 ln. 9-10; p. 31 ln. 19-20. Cisco asks that these passages be sealed provisionally, pending clarification by Arista of the Cisco information to which these passages refer.

1 11. Exhibit A is a copy of an internal Cisco business communication produced by
2 Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential
3 Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at
4 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential –
5 Attorneys’ Eyes Only Information.” Exhibit A is an internal email thread that contains Cisco’s
6 confidential business information regarding, *inter alia*, Cisco’s assessment of the marketplace and
7 its strategies for marketing its products within the marketplace. Maintaining this information as
8 confidential provides Cisco with an “opportunity to obtain an advantage over competitors”
9 because its public disclosure would provide competitors with a roadmap to Cisco’s marketing
10 strategies within various market segments. *See Elec. Arts*, 298 F. App’x at 569. Cisco therefore
11 requests that Exhibit A, and related passages in Arista’s briefing, be sealed.

12 12. Exhibit B is a personal communication between a Cisco employee and a departing
13 colleague. Cisco has de-designated this document under the protective order in this case and does
14 not seek sealing of it, except for the personal email addresses of the individuals who are
15 corresponding. A version of this exhibit with those personal email addresses redacted is attached
16 hereto as Proposed Redacted Exhibit B. Cisco does not seek sealing of any passages in Arista’s
17 briefing that quote or discuss Exhibit B.

18 13. Exhibit C is a copy of an internal Cisco business communication produced by
19 Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential
20 Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at
21 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential –
22 Attorneys’ Eyes Only Information.” Exhibit C comprises Cisco’s confidential business
23 information regarding, *inter alia*, its product development plans, marketing strategies, and market
24 assessment. Disclosing this information to Cisco’s competitors would harm Cisco’s business by
25 tipping Cisco’s competitors off as to Cisco’s future operations plans, affording those competitors
26 an unfair opportunity to pre-empt Cisco’s efforts. This would “harm [Cisco’s] competitive
27 standing.” *Nixon*, 435 U.S. at 598. Cisco therefore requests that Exhibit C, and related passages
28 in Arista’s briefing, be sealed.

1 14. Exhibit D is a public document. Cisco has de-designated this document under the
2 protective order in this case and does not seek sealing of it. A revised version of the document,
3 which omits any confidentiality legend, is attached hereto as Revised Exhibit D. Cisco does not
4 seek sealing of any passages in Arista's briefing that discuss Exhibit D.

5 15. Exhibit E is a public document. Cisco has de-designated this document under the
6 protective order in this case and does not seek sealing of it. A revised version of the document,
7 which omits any confidentiality legend, is attached hereto as Revised Exhibit E. Cisco does not
8 seek sealing of any passages in Arista's briefing that discuss Exhibit E.

9 16. Exhibit F is a copy of excerpts from an internal Cisco business communication
10 produced by Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as
11 "Confidential Business Information." Under the Stipulated Protective Order governing this
12 litigation, Dkt. 53 at 6 fn. 1, this document is deemed to have been produced in this case as
13 "Highly Confidential – Attorneys' Eyes Only Information." Exhibit F comprises Cisco's
14 confidential business information regarding, *inter alia*, Cisco's product marketing, including
15 features that differentiate Cisco's products from those of its competitors. Disclosure of this
16 information would "harm [Cisco's] competitive standing" by giving Cisco's competitors access to
17 Cisco's confidential marketing and product plans. *See Nixon*, 435 U.S. at 598. Exhibit F, and the
18 passages of Arista's briefing that quote from it, should therefore be sealed.

19 17. Exhibit G is a copy of an internal Cisco business communication produced by
20 Cisco in this litigation and designated "Highly Confidential – Attorneys' Eyes Only Information."
21 under the Stipulated Protective Order governing this litigation, Dkt. 53. Exhibit G comprises
22 Cisco's confidential business information regarding, *inter alia*, its product development plans
23 relating to enhancements for Cisco's IOS software. The specific slide contained in Exhibit G
24 appears to depict one portion of an internal analysis of Cisco's product development. Maintaining
25 this information as confidential provides Cisco with an "opportunity to obtain an advantage over
26 competitors" by preserving Cisco's ability to continue developing its products without fear that
27 competitors will attempt to capitalize on Cisco's assessment of its product development needs.
28

1 *See Elec. Arts*, 298 F. App'x at 569. Cisco therefore requests that the Court seal Exhibit G and
2 related passages in Arista's briefing.

3 18. Exhibit H is a copy of an internal Cisco business communication produced by
4 Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as "Confidential
5 Business Information." Under the Stipulated Protective Order governing this litigation, Dkt. 53 at
6 6 fn. 1, this document is deemed to have been produced in this case as "Highly Confidential –
7 Attorneys' Eyes Only Information." Exhibit H comprises Cisco's confidential business
8 information regarding, *inter alia*, its internal assessment of Arista's products and Arista's product
9 development strategy. Disclosing this information to Cisco's competitors would harm Cisco's
10 business by identifying to competitors Cisco's assessment of the relative strengths and weaknesses
11 of products in the market, which competitors could exploit in their own product development or
12 marketing plans. As a result, Cisco requests that Exhibit H and passages that quote it should be
13 sealed.

14 19. For the sake of clarity, Cisco has appended a Proposed Redacted Brief that reflects
15 the redactions to Arista's Brief that Cisco respectfully requests the Court approve. Cisco similarly
16 has attached proposed redacted versions of Exhibit 1 and Exhibit B, and revised versions of
17 Exhibits D and E.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed in San Francisco, California,
3 on January 29, 2016.

4
5 /s/ Matthew D. Cannon

6 Matthew D. Cannon (Bar No. 252666)
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